

IN THE UNITED STATES PATENTS AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re Application of : Maa, Shalong / *Ex parte*
Appeal No. : 2001-0908
Application No. : 08/833,342
Filing Date : April 04, 1997
For : "Computer-Controlled Talking Toy Figure with Animated Features"
Art Unit / Examiner : 3721 (3713) / Paradiso, J

Chief Administrative Patent Judge
Board of Patent Appeals and Interferences
U.S. Patent and Trademark Office
Washington, D.C. 20231

Dear Sir:

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BOARD OF PATENT APPEALS
AND INTERFERENCES

STATUS INQUIRY AND REQUEST FOR PUBLICATION OF THE BOARD'S DECISION
(35 U.S.C. §9, 37 C.F.R. § 1.14(d) and (g), and 37 C.F.R. § 1.351)

1. The undersigned Appellant respectfully submits the present paper to the Board of Patent Appeals and Interferences (the "Board"), in response to the Chief Administrative Patent Judge (the "Judge")'s decisions dated 09/13/2002 (Paper No. 48) (the "Decisions"), (i) for inquiring about the status of the above-identified patent application / appeal (M.P.E.P. § 203.08), and (ii) for requesting publication of said Decision and the Judge's previous "Decision on Petition" dated 07/15/2002 (Paper No. 44) (the "Previous Decision") pursuant to 37 C.F.R. § 1.14(g) and § 1.351.

I. STATUS INQUIRY

2. More than twenty-seven months have passed since Appellant's filing of the original Appeal Brief dated 06/06/2000 (Paper No. 25), and about ten months have passed since the application / appeal was assigned to a Board panel for decision (see below); the undersigned Applicant has not been notified of any action thereupon by the panel.

3. Thus, the undersigned Appellant respectfully requests that the Judge advise the undersigned in writing of the expected date when the panel will take action on the merit of the application / appeal and the amount of time needed for panel action in a typical case of *ex parte* appeal.

II. REQUEST FOR PUBLICATION OF THE BOARD'S DECISION

4. The Judge states in said Decision and in said Previous Decision, respectively, with respect to the Judge's denial of the undersigned's power to inspect and make copies, that "The reason why is that the application was assigned to a Board Panel", and " the application can not be released at this time because it is with the Board panel, ...".

5. However, (i) as described above, according to the communication from the Board dated 05/07/2001 (Paper No. 41), substantial amount of time ("about" more than ten months, i.e., since November 2001, see Paper No. 41, second page) has passed since the application was assigned to a Board panel; (ii) the undersigned's original "Request for Certified Copies" was submitted to the Office of Public Record (OPR) in December 2000, i.e., eleven months before said assignment of the application to the Board panel, and the document supply fees therefore were accepted by the OPR in February 2001, i.e., nine months before said assignment to the Board panel (see page 5, Subsection 10(a) and page 6, Subsection 10(f) of the Petition filed 04/23/2002, Paper No. 43, hereinafter, the "Petition"); thus (iii) the OPR has been provided with sufficient amount of time to make copies before and after the application was assigned to the Board panel without interfering with the panel's action on the merit thereof; (iv) the undersigned was advised by the Program and Resource Administrator of the Board, Mr. Feinberg, in August, 2001 via teleconference, i.e., before said assignment of the application to the Board panel, that the Judge had already decided not to release the application file for copying.

6. Appellant respectfully points out that, (i) in said Decision, the Judge fails to answer the undersigned's question with respect to legal ground of the Judge's decision, i.e., whether it is the Board's general or current rule of practice to deny a power to inspect and make copies while an *ex parte* application is under the jurisdiction of the Board, as so stated in the undersigned's "Request for Reconsideration" filed 08/26/2002 (Paper No. 47) (the "Request"), or whether the Judge's such decisions were rendered pursuant to any legal precedent of the Board, (ii) the undersigned is entitled to a power to inspect and make copies pursuant to 35 U.S.C. § 9 and 37 C.F.R. § 1.14(d), thus (iii) the Judge's decision of denial of such power constitutes substantial literal amendment to and new interpretation of the current patent statute and regulation, and is contrary to the federal statute pertaining to the Freedom of Information Act (FOIA); (iv) according to 37 C.F.R. § 1.14(g),

“Any decision by the Commissioner or the Board of Patent Appeals and Interferences which would not otherwise be open to public inspection may be published or made available for public inspection” ; and (v) according to 37 C.F.R. § 1.351, “All amendments to the regulations in this part will be published in the *Official Gazette* and in the *Federal Register*.”

7. Therefore, the undersigned Appellant respectfully requests that said Judge’s Decision and Previous Decision be published pursuant to 37 C.F.R. § 1.14(g) and 37 C.F.R. § 1.351. Appellant respectfully represents that said Decision and said Previous Decision do not disclose any trade secret or any other confidential information (see 37 C.F.R. § 1.14(g)(2)).

8. The Judge also states in said Decision with respect to the Judge’s denial of power to inspect and make copies that “any release will only further delay the Decision”. However, as described above, substantial amount of time (more than ten months, see Paper No. 41, second page) have passed since the application was assigned to a Board panel. Thus, Appellant respectfully represents that, should it be substantially longer (e.g., more than 2 months from the date of receipt of the present submission) before the Board panel start acting upon the merit of the application / appeal, Appellant is willing to accept such delay should the Judge decide to release the application file to the OPR for copying as a result of and/or in response to the present submission, provided that the Judge render written response to the Status Inquiry in Section I of the present paper accordingly.

9. If the Board panel has been already acting on or will in a near future (e.g., less than a month from the date of receipt of the present submission) start acting upon the merit of the application / appeal, Appellant would like to withdraw the previous requests that the Board release the application file for copying and, thus, the present request for publication herein, so as not to unduly interfere with the Board panel’s such action; in which case, Appellant will request the OPR to refund the document supply fees submitted therefore pursuant to 37 C.F.R. § 1.26.

III. ADVANCEMENT OF THE CASE OUT OF TERM

10. With respect to Appellant’s request in said Request for making the application special so as to advance the case out of term, the Judge states in said Decision that, “...this is not the same as granting a petition to make an application special in accordance with M.P.E.P. § 708.02 ...” and

that, "to file a request or petition to expedite the appeal would be moot since the application has already been assigned to a Board panel".

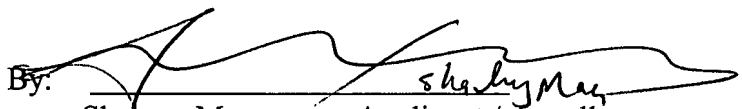
11. The undersigned respectfully submits that, (i) the only cause of Appellant's such request is, as described above, again, that substantial amount of time (more than ten months, see Paper No. 41, second page) have passed since the application was assigned to a Board panel, (ii) According to M.P.E.P. § 707.02 (*not* § 708.02), § 708.01 and § 708.01(I), an Application pending more than five years shall be advanced out of turn *without* a petition under 37 C.F.R. § 1.102(d), thus, any communication to that effect, including any petition, from Appellant could serve the purpose of requesting such advancement; (iii) said Appellant's Petition filed 04/23/2002 was submitted under C.F.R. § 1.182, *not* under 37 C.F.R. § 1.102(d), and M.P.E.P § 708.02 is *not* relevant to said Request and Petition; (iv) the Judge's response to the Status Inquiry in Section I of the present paper is, again, respectfully requested.

CONCLUSION

12. For the foregoing reasons, the undersigned Appellant respectfully requests that: (1) the Judge advise the undersigned in writing of the expected date when the Board panel will take action on the merit of the application / appeal and the amount of time needed for panel action in a typical case of *ex parte* appeal, and (2a) the Judge ignore Appellant's previous requests that the Board release the application file for copying, if the Board panel has been already acting on or will in a near future start acting upon the merit of the application / appeal otherwise, (2b) said Judge's Decision and Previous Decision be published pursuant to 37 C.F.R. § 1.14(g) and § 1.351. Should any fees be due in connection with the present paper, please contact the undersigned at (972) 307-5017.

Respectfully submitted,

SIGNED on September 25, 2002

By: 
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